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EXAMINER
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SHAFFER, ERIC T

ART UNIT	PAPER NUMBER
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3623

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/695,016

**Applicant(s)**

BLACKSHAW ET AL.

**Examiner**

Eric T. Shaffer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 October 2000.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This communication is in response to the application filed October 23, 2000.

#### ***Allowable Subject Matter***

2. Claims 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Specification***

3. The specification is missing the U.S. Application numbers for the items mentioned by docket numbers in paragraph 1 of page one of the specification. The U.S. Application numbers have been left blank. These guidelines are suggested for the applicant's use. Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.

#### ***Claim Rejections - 35 USC § 101***

4. Claims 16 – 26, 28, and 43 - 58 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e. abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences,

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for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, invoke, use, or advance the technological arts.

In the present case, the method of obtaining feedback does not specifically use technology to carry out any of the non-trivial claimed method steps. The steps of soliciting, obtaining and transmitting consumer feedback may be performed manually or without the aid of any technology. Thus, claims 16 – 26, 28, and 43 - 58 do not affect, effect, or are affected by technology, and thus do not recite statutory subject matter. Mention of the use of a technological device such as a computer or a computer operable medium is required within the body of the claim language for said claims to be patentable.

The claims 16 – 26, 28, and 43 - 58 do meet the second part of the two-prong test because the claimed invention does produce a useful, concrete and tangible result.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, 5, 7 – 10, 12, 14 – 20, 23, 25 – 27, 54, 55 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over the website [www.zagat.com](http://www.zagat.com) archived on December 12, 1998.

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As per claims 1, 15, 54 and 57, www.zagat.com teaches a computer implemented method of collecting data associated with a consumer through generation of a consumer feedback communication via a wide area network, comprising:

in response to input from a consumer (“a truly interactive network of over 100,000 dedicated individuals giving feedback not only about the restaurants that fed them but about hotels, resorts and spas”, page 29, paragraph 2), via the wide area network (“the survey has become available in a variety of on-line formats, including Prodigy and CompuServe”), page 24, where on-line Internet access via Prodigy and CompuServe constitute a network) identifying a business to which the consumer feedback communication is directed (“We encourage you to submit write-in reviews for restaurants”, page 6, paragraphs 2), where identifying the name of a restaurant is inherent in writing a review of a restaurant;

collecting data associated with the consumer from the obtained feedback data (“to take part in the Zagat Surveys you must register. Please take a minute to complete the form below”, page 24, paragraph 3), wherein the form below contains first name, last name, street address, town or city, state, zip code, age, gender, occupation, employer, highest education level, household income and credit card information collected on the customer.

While www.zagat.com does teach using consumer feedback to tally and generate ratings and comment quotations, (“the ratings reflect an average of all votes tallied for a given restaurant, while quotations selected from an extensive pool of surveyor comments make up the substance of the reviews”, page 24, paragraph 4), it does not specifically use the word automatically. A general reason why it would be useful to automatically generate a portion of

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the consumer feedback is because the www.zagat.com system collects data from “over 100,000 participants rating and reviewing restaurants in more than 40 major U.S. and foreign cities”, page 24) and this volume of data would not be easily manageable by a person.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to process this volume of information from over 100,000 participants automatically because computers can automatically tabulate and extract large volumes of information faster, more accurately, and with less human interaction, than could otherwise be performed by a person alone. Having a computer automatically perform this tabulation and extraction functionality would remove the need for human workers to perform this functionality and thus would save money.

7. As per claims 3 and 5, www.zagat.com teaches the method wherein the collected data includes data quantifying past experiences and purchases of the consumer (“Zagat surveys include a 0 to 30 poor to perfect numerical rating system”, page 24, paragraph 4).

8. As per claim 7, www.zagat.com teaches the method as recited in claim 1, further comprising selecting an industry for which data associated with the consumer is to be collected wherein collecting data comprises obtaining consumer data relating to the selected industry from the obtained feedback data (“Zagats extended their surveys to U.S. hotels, resorts and spas and, in 1990, they first reviewed the airline and car rental industries”, page 24, paragraph 3), wherein restaurants, hotels, airlines and car rental industries are selected industries.

9. As per claims 8 and 10, www.zagat.com teaches the method as recited in claim 7, further comprising providing the collected data to one or more businesses within the selected industry (“U.S. Hotels, Resorts & Spas Survey The nationwide survey covering more than 2,100 hotels,

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resorts, & spas, an invaluable resource for frequent travelers and travel professionals Special Price \$15.96”), wherein selling the survey results is a means for providing the survey results to a business.

10. As per claim 9, www.zagat.com teaches the method as recited in claim 1, further comprising associating the collected data with the consumer feedback communication (“the ratings reflect an average of all votes tallied for a given restaurant, while quotations selected from an extensive pool of surveyor comments make up the substance of the reviews”, page 24, paragraph 4).

11. As per claim 12, www.zagat.com teaches The method as recited in claim 1, further comprising obtaining socio-economic data associated with the consumer, wherein the socio-economic data includes at least one of income (“What is your household income?”, page 5) of the consumer and occupation of the consumer (“Occupation/Position”, page 5); and combining the collected data and the socio-economic data to obtain one or more indices associated with the consumer (“while providing an estimate of the average cost”, page 24), wherein the index of average cost is based on the household income of the consumer who rated the restaurant, since income determines how expensive of a restaurant a consumer visits and also is reflected in how good a value the consumer determines the restaurant to be.

12. As per claim 14, www.zagat.com teaches the method as recited in claim 12, wherein the one or more indices includes a buyer power index indicating a level of purchase power of the consumer (“household income”, page 5), wherein the amount of income determines how much of a item a customer can purchase, with a high income customer able to afford to purchase more items that a low income customer.

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13. As per claims 16, 27 and 55, www.zagat.com teaches a computer implemented method of collecting data associated with a consumer, comprising:

obtaining one or more ratings relating to the business from the consumer (“the Zagat surveys separately rate the distinct qualities of a restaurant food, decor and service or of a hotel room service, dining and public facilities while providing an estimate of average cost”), where food, decor and service are ratings;

composing a consumer feedback communication using the obtained ratings (“the ratings reflect an average of all votes tallied for a given restaurant, while quotations selected from an extensive pool of surveyor comments make up the substance of the reviews”, page 24, paragraph 4), where the ratings are a calculated average and the quotations are a part of the consumer feedback;

creating one or more indices from the obtained ratings, the one or more indices categorizing the consumer according to the obtained ratings (“the Zagat surveys separately rate the distinct qualities of a restaurant food, decor and service or of a hotel room service, dining and public facilities while providing an estimate of average cost”), where food, décor and service are indices that are used to rate individual restaurants and hotels with respect to other restaurants and hotels.

While www.zagat.com does teach submitting feedback in the form of a review, (“We encourage you to submit write-in reviews for restaurants”, page 6, paragraphs 2), www.zagat.com does not specifically teach selecting a business to which a consumer feedback communication is to be directed. A general reason that selecting a business for

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feedback would be to identify the name of the business, such as a restaurant, that is being reviewed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to identifying the name of the business that the solicited feedback was being directed in order to allow those reading the derived reviews to know the name of the restaurant or business being reviewed because this would add a context to the feedback and the reviews generated from the feedback. Without the ability to name the business, the feedback would ultimately not be of much value.

14. As per claim 17 and 20, www.zagat.com teaches the method as recited in claim 16, further comprising repeating steps (a), (b), and (c) for one or more consumer feedback communications directed to one or more businesses within an industry (“Log right in to review New York City restaurants”, page 6), wherein the word restaurants is plural and allows a user to review more than one restaurant.

15. As per claim 18, www.zagat.com teaches the method as recited in claim 17, wherein (d) creating one or more indices is performed for the one or more consumer feedback communications such that a single set of indices is associated with the consumer (“household income”, page 5), wherein the amount of income inherently determines how much of a item a customer can purchase, with a high income customer able to afford to purchase more items that a low income customer.

16. As per claim 19, www.zagat.com teaches transmitting the consumer feedback to the business (“Log right in to review New York City restaurants”, page 6, paragraph 1), wherein logging in is the way a system obtains feedback in a network system and posting on a network is transmitting.

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17. As per claims 23 and 25, www.zagat.com teaches the method as recited in claim 16, wherein the one or more obtained ratings include an indication of volume of purchase of goods or services by the consumer within a product category associated with the business (“How many nights do you spend in hotels/resorts per year”, page 5), wherein the volume is how many nights out of a possible 365 per year;

obtaining socio-economic data associated with the consumer, wherein the socio-economic data includes at least one of income of the consumer (“household income”, page 5), and occupation of the consumer (“Occupation/Position”, page 5);

combining the obtained ratings and the socio-economic data to obtain a buyer power index associated with the consumer (“household income”, page 5), wherein the amount of income determines how much of a item a customer can purchase, with a high income customer able to afford to purchase more items than a low income customer.

18. As per claim 26, www.zagat.com teaches the method as recited in claim 25, wherein the one or more obtained ratings further include an indication of frequency of purchase by the consumer of goods or services provided by the business (“How many times do you dine out per week?”, page 4).

19. Claims 2, 28 – 37, 40 - 48, 56 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over the website www.zagat.com archived on December 12, 1998 in view of Sloo (US ,895,450).

20. As per claims 2, 28 - 30 and 58, www.zagat.com teaches the method as recited in claim 1, further comprising determining word of mouth impact of the consumer from information

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associated with addressing the consumer feedback communication to one or more additional individuals (“the surveys represent the best imaginable source of travel and dining information – the “organized word-of-mouth” of sophisticated consumers”, page 24), wherein the ratings derived from the survey have a word of mouth impact;

a consumer feedback communication generator configured to obtain feedback data associated with the business from the consumer (“Log right in to review New York City restaurants”, page 6, paragraph 1) compose a consumer feedback communication including at least a portion of the obtained feedback data, (“quotations selected from an extensive pool of surveyor comments make up the substance of the reviews”, page 24, paragraph 4);

a data collection mechanism (“America Online and pathfinder had both added Zagat survey to their services”, page 24, paragraph 24), coupled to the consumer feedback communication generator, the data collection mechanism configured to interpret the feedback data and associate the interpreted feedback data with consumer information identifying the customer (“Zagat surveys include a 0 to 30 poor to perfect numerical rating system”, page 24, paragraph 4). [www.zagat.com](http://www.zagat.com) does not teach addressing consumer feedback to individuals at the business or to others.

Sloo teaches addressing the consumer feedback communication to an individual associated with the business (“the program notifies the subject that a complaint has been lodged against it”, column 5, lines 39 - 40) and addressing the consumer feedback communication to one or more additional individuals (“a party could link a current complaint to any other complaints that the party feels are related to the present complaint and would like the complaint handling apparatus or a judge/jury to consider”, column 5, lines 54 - 56), where the additional

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individuals are the judge and the jury. Both inventions are analogous art because they both teach a device that presents customer feedback and demographic data to a business.

It would have been obvious to one of ordinary skill at the time the invention was made to combine the two consumer feedback inventions in order to allow the feedback to be transmitted to more than just one person because copying messages, both electronic messages and non-electronic communication to a plurality of recipients is very old and well known in the art of communication and would offer the benefit of allowing for review of customer feedback by objective third party mediators, who would be more likely to offer a fair and objective evaluation of the feedback or complaint that the person complaining and the representative of the company being complained against.

21. As per claim 31, www.zagat.com teaches the method as recited in claim 29, further comprising transmitting the consumer feedback communication to the individual associated with the business and the one or more additional individuals ("The votes are in on the best places to dine in '99. See the here first, click on a city for top 10 lists and reviews", page 7), where the choice allows all users to receive a transmission of the reviews.

22. As per claim 32, www.zagat.com teaches the method as recited in claim 29, wherein determining word of mouth impact of the consumer comprises ascertaining a number of individuals carbon copied on the consumer feedback communication ("over 100,000 participants rating and reviewing restaurants", page 24), wherein this count of circulation demonstrates that the system has the inherent ability to count the number of people sending and receiving feedback.

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23. As per claim 33, www.zagat.com teaches the method as recited in claim 29, further comprising:

repeating the steps of identifying (“a truly interactive network of over 100,000 dedicated individuals giving feedback not only about the restaurants that fed them but about hotels, resorts and spas”, page 29, paragraph 2), obtaining (“We encourage you to submit write-in reviews for restaurants”, page 6, paragraphs 2), generating (“the ratings reflect an average of all votes tallied for a given restaurant, while quotations selected from an extensive pool of surveyor comments make up the substance of the reviews”, page 24, paragraph 4), and collecting feedback. www.zagat.com does not teach addressing the feedback to one or more additional individuals.

Sloo does teach addressing the consumer feedback communication to one or more additional individuals for one or more consumer feedback communications sent by the consumer individuals (“a party could link a current complaint to any other complaints that the party feels are related to the present complaint and would like the complaint handling apparatus or a judge/jury to consider”, column 5, lines 54 - 56), where the additional individuals are the judge and the jury. Both inventions are analogous art because they both teach a device that presents customer feedback and demographic data to a business.

It would have been obvious to one of ordinary skill at the time the invention was made to combine the two inventions in order to transmit and forward the feedback to more than just one person because copying messages, both electronic messages and non-electronic communication to a plurality of recipients is very old and well known in

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the art of communication and would offer the benefit of allowing for review of customer feedback by objective third party mediators, who would be more likely to offer a fair and objective evaluation of the feedback or complaint that the person complaining and the representative of the company being complained against.

24. As per claim 34, www.zagat.com teaches the method as recited in claim 33, further comprising determining a number of consumer feedback communications sent by the consumer and ascertaining an average number of individuals carbon copied by the consumer on a consumer feedback communication from the number of consumer feedback communications sent by the consumer and the total number of individuals carbon copied for the one or more consumer feedback communications sent by the consumer (“a precise 30-point rating scale based on the voices of our 18,320 participants”, page 26), wherein the number of participants teaches counting the number of individuals that send and receive feedback.

25. As per claim 35, www.zagat.com teaches the method as recited in claim 29, further comprising collecting and addressing the consumer feedback communication to a second set of one or more additional individuals (“a party could link a current complaint to any other complaints that the party feels are related to the present complaint and would like the complaint handling apparatus or a judge/jury to consider”, column 5, lines 54 - 56), where the second set of individuals are the judge and the jury.

26. As per claim 36, www.zagat.com teaches the method as recited in claim 35, wherein determining word of mouth impact of the consumer comprises:

ascertaining a number of individuals carbon copied on the consumer feedback communication and ascertaining a number of individuals in the second set of one or more

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additional individuals (“over 100,000 participants rating and reviewing restaurants”, page 24), wherein this count of circulation demonstrates that the system has the inherent ability to count the number of people sending and receiving feedback.

27. As per claim 37, www.zagat.com teaches the method as recited in claim 36, wherein the second set of one or more additional individuals are direct addressees of the consumer feedback communication (“over 100,000 participants rating and reviewing restaurants”, page 24), wherein those participating are sending and receiving the feedback.

28. As per claim 40, www.zagat.com teaches the method as recited in claim 29, further comprising obtaining socio-economic data associated with the consumer (“age, Occupation/Position, household income”, page 5), wherein age, occupation and income are socio-economic data;

wherein determining the word of mouth impact of the consumer further comprises using the socio-economic data to infer a socio-economic nature of the one or more additional individuals to whom the consumer feedback communication has been addressed.

29. As per claim 41, www.zagat.com teaches the method wherein socio-economic data includes at least one of salary (“What is your household income?”, page 5), job title (“Occupation/Position”, page 5) and education level of customer;

30. As per claim 42, www.zagat.com teaches the method as recited in claim 40, wherein the socio-economic data includes at least one of a title, a political status, and an associated special interest group (“Employer” and “What is the highest level of education that you have completed?”, page 5), wherein an Employer and / or an education level are special interest groups.

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31. As per claims 43 and 56, www.zagat.com teaches A computer implemented method of collecting data associated with a consumer through generation of a consumer feedback communication via a wide area network, comprising:

in response to input from a consumer via the wide area network, identifying a business to which the consumer feedback communication is directed (“We encourage you to submit write-in reviews for restaurants”, page 6, paragraph 2);

obtaining feedback data relating to the business from the consumer via the wide area network (“Log right in to review New York City restaurants”, page 6, paragraph 1);

automatically generating at least a portion of the consumer feedback communication using the feedback data (“the ratings reflect an average of all votes tallied for a given restaurant, while quotations selected from an extensive pool of surveyor comments make up the substance of the reviews”, page 24, paragraph 4);

creating an index from information associated with the one or more individuals to whom the consumer feedback communications were addressed (“Ten Most Popular; Ten Best Bangs for the Buck; Ten Top Service; Ten Top Décor; Ten Top Food”, page 7), wherein the index of the top ten by category is related to the customers feedback.

Sloo teaches:

addressing the consumer feedback communication to an individual associated with the business (“the program accomplishes this by transmitting the complaint to the personal e-mail address entered by the complainant”, column 5, lines 22 - 24);

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addressing the consumer feedback communication to one or more additional individuals (“link a current complaint to any other complaints that the party feels are related to the present complaint and would like the complaint handling apparatus of a judge/jury to consider”, column 5, lines 54 - 56). Both inventions are analogous art because they both teach a device that presents customer feedback and demographic data to a business.

It would have been obvious to one of ordinary skill at the time the invention was made to combine the two consumer feedback inventions in order to allow the feedback to be transmitted to more than just one person because copying messages, both electronic messages and non-electronic communication to a plurality of recipients is very old and well known in the art of communication and would offer the benefit of allowing for review of customer feedback by objective third party mediators, who would be more likely to offer a fair and objective evaluation of the feedback or complaint that the person complaining and the representative of the company being complained against.

32. As per claim 44, www.zagat.com teaches the method as recited in claim 43, wherein (g) creating an index further comprises ascertaining a number of the consumer feedback communications that have been generated (“a precise 30-point rating scale based on the voices of our 18,320 participants”, page 26), wherein if the number of participants are counted, then the ability to count them is inherent in the fact they have been counted.

33. As per claim 45, www.zagat.com teaches the method as recited in claim 43, wherein creating the index further comprises accessing at least a portion of the obtained feedback data

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("Ten Top Service", "Ten top Decor", "Ten Top Food"), wherein the feedback data is used to determine an index value for service, décor, food and price.

34. As per claim 46, www.zagat.com teaches the method as recited in claim 43, wherein the information indicates a title or status of the one or more individuals ("What is the highest level of education that you have completed?", page 5), wherein education conveys the title of bachelors, masters, professor, or doctor.

35. As per claim 47, www.zagat.com teaches the method as recited in claim 43, further comprising ascertaining from the index whether the consumer poses has a potential to negatively influence other consumers ("Registered user? Log right in to review New York City restaurants. Click the Let Me in button to start reviewing", page 6), where the potential to negatively influence other customers is inherent in a review when the review is based on ("a 0 to 30 poor to perfect numerical rating system", page 24, paragraph 4).

36. As per claim 48, www.zagat.com teaches the method as recited in claim 43, further comprising determining whether the index is within a predetermined set of index values and identifying the consumer as an expert user when the index is within the predetermined set of index values ("How many nights do you spend in hotels/restaurants per year", page 5), wherein the index of the percentage of time a person spends in hotels indicates the level of experience and thus expertise with respect to hotels.

37. Claims 4, 13 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the website www.zagat.com archived on December 12, 1998 in view of the book "Marketing

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Research in a Marketing Environment” by William Dillon, Thomas Madden and Neil Firtle published in 1987.

38. As per claim 4, www.zagat.com teaches a system for soliciting and displaying user feedback associated with a service business. www.zagat.com does not teach where the collected data includes data quantifying future intentions of the consumer. Dillon/Madden/Firte do teach surveying customers as to their future purchase intentions (“On your next purchase occasion, do you intend to purchase brand X? 0% Definitely will not buy: 100% definitely will buy”, page 288, Example).

39. As per claim 13, www.zagat.com teaches a system for soliciting and displaying user feedback associated with a service business. www.zagat.com does not teach a loyalty index. Dillon/Madden/Firte do teach a loyalty index indicating a level of loyalty of the consumer to the business (“brand loyalty is measured by computing the proportion of total purchases devoted to the most frequently purchased brand, then the brand loyalty score for customer 1 is  $3.6 = 0.50$  and for customer 2 it is  $2/6 = 0.67$ ”, page 286). Both inventions are analogous art because they are in the field of marketing research.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine both the user feedback and the brand loyalty score in order to quantify the degree to which the consumer providing feedback was a loyal customer because opinions from highly loyal customers are from customers with a wider range of experience with the product and therefore the opinion has a larger basis in fact than a similar opinion from a once or occasional user. The highly loyal customer also has a higher potential for future sales and thus should be afforded more weight in order to account for the possibility of greater future potential revenue.

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40. As per claim 24, www.zagat.com teaches a system for soliciting and displaying user feedback associated with a service business. www.zagat.com does not teach a rating that indicates the business's share of volume of purchase. Dillon/Madden/Firte does teach the method wherein the one or more obtained ratings further comprise an indication of the business' share of the volume of purchase by the consumers of goods or services within the product category ("Distribution of Volume", page 98, chart 2). Both are analogous art because they both teach aspects of marketing research.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine both the user feedback and the product category classification inventions because this would allow the user to determine which income or other demographic group was purchasing the largest amount of product, thus allowing the marketing communications to be targeted toward that group and thereby increasing sales.

41. Claims 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the website www.zagat.com archived on December 12, 1998 in view of the article "Customer Lifetime Value Analysis: An Integrated Empirical Framework for Measurement and Explanation" by Werner Josef Reinhartz written in April 1999.

42. As per claims 6 and 11, www.zagat.com teaches the method as recited in claim 1, further comprising obtaining socio-economic data associated with the consumer, wherein the socio-economic data includes at least one of income ("What is your household income?", page 5) of the consumer and occupation of the consumer ("Occupation/Position", page 5). www.zagat.com does not teach determining an economic value of the consumer to the business.

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Reinartz does teach determining an economic value of the consumer to the business from the socioeconomic data (“Individual lifetime profits are commonly characterized in the form of equation 12”, pages 63, formula 12). Both inventions are analogous art because they are in the field of marketing research.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine both inventions in order to organize the consumer feedback by demographic group and thereby detect new and potentially lucrative sales prospects from the data. Selling to such undiscovered potential markets would offer the benefit of increased sales and increased profits.

43. Claim 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the website [www.zagat.com](http://www.zagat.com) archived on December 12, 1998 in view of Sloo (US 5,895,450).

44. As per claim 38, [www.zagat.com](http://www.zagat.com) teaches the method as recited in claim 35, further comprising:

repeating the steps of identifying, obtaining (page 6, paragraph 2), generating (page 24, paragraph 4), collecting (page 24, paragraph 4), addressing the consumer feedback communication to an individual associated with the business and addressing the consumer feedback communication to one or more additional individuals for one or more consumer feedback communications sent by the consumer; and ascertaining a total number of individuals carbon copied for the one or more consumer feedback communications sent by the consumer (“based on the voices of our 18,320 participants”, page 26);

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ascertaining a total number of individuals in the second set of one or more additional individuals for the one or more consumer feedback communications sent by the consumer (“based on the voices of our 18,320 participants”, page 26), where the ability to count the participants is inherent in the accurate number of participants revealed by 18,320;

While adding the total number of individuals carbon copied and the total number of individuals in the second set over the one or more consumer feedback communications sent by the consumer to obtain a total number of individuals who received the one or more consumer feedback communications sent by the consumer is not taught by [www.zagat.com](http://www.zagat.com), Official Notice is taken that adding two groups of individuals who have a trait in common, such as receiving feedback, is so old and well known in the art that it would be obvious to do so. Groups of people who share a common goal or purpose or need to access a common set of data would clearly benefit from being added to a common data distribution list and it would further be beneficial to a business to compile these two groups of people in order to more cost effectively distribute advertising, marketing and other business related communications toward one complete group rather than to two disparate groups of individuals.

45. As per claim 39, [www.zagat.com](http://www.zagat.com) teaches the method as recited in claim 38, further comprising:

determining a number of the consumer feedback communications sent by the consumer (“a precise 30-point rating scale based on the voices of our 18,320 participants”, page 26);

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ascertaining an average number of individuals who received a consumer feedback communication sent by the consumer from the number of consumer feedback communications sent by the consumer and the total number of individuals who received the one or more consumer feedback communications sent by the consumer (“over 100,000 participants rating and reviewing restaurants”, page 24), wherein this count of circulation demonstrates that the system has the inherent ability to count the number of people sending and receiving feedback.

46. Claim 49 – 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over the website www.zagat.com archived on December 12, 1998 in view of Sloo (US 5,895,450) and in further view of the book “Marketing Management” by Philip Kotler published in 1997.

47. As per claim 49, www.zagat.com teaches a system for soliciting and displaying user feedback associated with a service business and also teaches word of mouth recommendations. www.zagat.com does not teach determining whether the index is within a predetermined set of index values and identifying the consumer as a user to receive free product or services to generate positive word of mouth. Sloo teaches a consumer complaint system that accepts user feedback in the form of presenting complaints about a good or service to a business. Both are analogous art because both receive consumer demographics and feedback from customers and use the data to determine traits or characteristics about customers. Neither invention teaches a trait identified as a set of index values or receiving a free product or service.

Kotler teaches demographic values as an index lying inside a predetermined range (“City or Metro Size; Age, Income”, page 257), wherein each value consists of a series of possible ranges. Kotler also teaches the use of free items (“Free Trials: Invite prospective purchasers to

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try the product without cost in the hope that they will buy the product”, page 665). Kotler also teaches positive word of mouth (“word-of-mouth coming from expert and social channels in generating new business”, page 617) where (“people will ask others-friends, acquaintances, professionals – for a recommendation. These include times when someone is seeking a physician, electrician, hotel, hospital”, page 619). All three are analogous art because they all teach

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine combination of the www.zagat.com system and the Sloo invention with the old and well known marketing concepts of demographic ranges and free product samples because using indexed values, referring friends and giving away free samples are old and very well known marketing techniques that businesses use to generate interest in and measure interest in their products and services and as such, using these techniques in collaboration with survey generated marketing data would be a logical way to market a product at the prospects identified by the www.zagat.com invention.

48. As per claims 50, 51 and 53, www.zagat.com teaches a system for sending a consumer feedback communication from a consumer to a business and collecting data associated with the consumer, comprising a consumer feedback communication generator configured to obtain feedback data associated with the business from the consumer and also teaches word-of-mouth references. www.zagat.com does not teach an index of predetermined values to determined the influence potential of the consumer. Sloo teaches a consumer feedback system that handles

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complaints. Both are analogous art because both accept consumer feedback and customer demographic data.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine both of these customer feedback systems in order to create an invention that would permit customer feedback to be gathered and responded to because addressing the concerns of customers would increase customer satisfaction, make customers happier, and result in satisfied customers continuing to be customers, which would increase sales. Neither invention incorporates indexes of customer attributes as a measure of influence potential of a customer.

Kotler teaches determining whether the index is within a predetermined set of index values (“researchers try to form segments by looking at consumer responses to benefits sought, use occasions, or brands. Once the segments are formed, the researcher sees whether different consumer characteristics are associated with each consumer-response segment. For example, the researcher might examine whether people who want quality verses low price in buying an automobile differ in their geographic, demographic, and psycho-graphic makeup. The major segmentation variables - geographic, demographics, psychographics, and behavioral segmentation are summarized in Table 9-1”, page 256). Kotler also teaches identifying the consumer as an individual that can be expected to generate positive word of mouth (“Of the 15,000 who took advantage of the offer, 10% indicated that they would become buyers, while 84% said they would recommend it to a friend”, page 617). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine both of these customer feedback systems with the old and well known marketing technique of using indexes and referrals because people who try a product or have a product referred by a friend are more likely

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to buy the product in the future, which would increase sales at a small increase in marketing costs, thereby increasing net income.

49. As per claim 52, www.zagat.com teaches the method wherein the socio-economic data includes at least one of a title, a political status, and an associated special interest group (“Employer” and “What is the highest level of education that you have completed?”, page 5), wherein an Employer and / or an education level are special interest groups.

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**Conclusion**

50. No claims were allowed and all claims were rejected.

51. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Alpdemir (US 6,658,389) – Business promotion system  
Damico et al (US 5,819,285) – Capture and store marketing information  
Verba et al (US 6,236,977) – Computer marketing system  
Boulton et al (US 5,537,618) – Implements user feedback system  
Frost (US 5,041,972) – Measures and evaluates consumer responses  
Kesel (US 6,574,614) – Consumer feedback apparatus  
Kesel (US 6,026,387) – Consumer feedback apparatus  
Monson (US 5,077,785) – Feedback apparatus  
Kesel (US 5,822,744) – Consumer feedback apparatus  
Wong et al (US 6,119,933) – Customer loyalty analysis  
Dietz (US 6,385,586) – Speech to text conversion

52. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric Shaffer whose telephone number is (703) 305-5283. The Examiner can normally be reached on Monday-Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:  
Commissioner of Patents and Trademarks  
Washington D.C. 20231

Or faxed to:

(703) 746-7238 [After Final communications, labeled "Box AF"]

(703) 746-7239 [Official communications]

(703) 706-9124 [Informal/Draft communications, labeled  
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

ETS

July 12, 2004

  
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